

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JACK HALL,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case Number: 07-10279

Hon. Thomas L. Ludington

ORDER GRANTING A CERTIFICATE OF APPEALABILITY

Petitioner has appealed the Court's order [Dkt. #26] denying his motion for re-issuance of the Court's August 13, 2009 judgment. The matter is now before the Court for determination of whether a certificate of appealability should issue on the petitioner's unsuccessful claim.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In Re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 123 S. Ct. 1029, 1039 (2003) (citations omitted).

In his motion, Petitioner argued that re-issuance of the Court's judgment was appropriate under Federal Rule of Civil Procedure 60(b)(6) so that Petitioner may appeal the denial of his petition for writ of habeas corpus outside the time constraints of Federal Rule of Appellate

Procedure 4(a). The Court disagreed, and concluded that Petitioner had not alleged any “unusual and extreme” facts to justify re-issuance of the Court’s August 13, 2009 judgment as is required under Rule 60(b)(6). Although the Court stands by its holding, it recognizes that reasonable jurists might rule otherwise. The Court will therefore grant a certificate of appealability on the issue of whether Petitioner had alleged “unusual and extreme” facts to justify re-issuance of the Court’s August 13, 2009 judgment.

Accordingly, it is **ORDERED** that a certificate of appealability is **GRANTED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 17, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 17, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS